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7 KNICKERBOCKER PROPERTIES, INC. XXXVIII

8
9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11

12 National Fair Housing Alliance, Inc.; Fair
Housing of Marin, Inc.; Fair Housing Napa
13 Valley, Inc.; Metro Fair Housing Services, Inc.;
and Fair Housing Continuum, Inc.,

14 Plaintiffs,

15 v.

16 A.G. Spanos Corporation, Inc.; A.G. Spanos
17 Development, Inc.; A.G. Spanos Land
Company, Inc.; A.G. Spanos Management, Inc.;
18 The Spanos Corporation; and

19 Knickerbocker Properties, Inc. XXXVIII; and
Highpointe Village, L.P., Individually and as
20 Representatives of a Class of All Others
Similarly Situated,

21 Defendants.
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Case No. C07-03255-SBA

**AMENDED [PROPOSED] ORDER
GRANTING DEFENDANT
KNICKERBOCKER PROPERTIES, INC.
XXXVIII'S MOTION TO DISMISS
PLAINTIFFS' FIRST AMENDED
COMPLAINT**

Date: March 11, 2008

Time: 1:00 p.m.

Ctrm: 3

Amended Complaint Filed: October 12, 2007

1 The motion of defendant Knickerbocker Properties, Inc. XXXVIII ("Knickerbocker") for
 2 an order dismissing Plaintiffs National Fair Housing Alliance, Inc., Fair Housing of Marin, Inc.,
 3 Fair Housing Napa Valley, Inc., Metro Fair Housing Services, Inc., and Fair Housing Continuum,
 4 Inc. (collectively "Plaintiffs") claims against Knickerbocker came on regularly for hearing on
 5 March 11, 2008, at 1:00 p.m. in Courtroom 3 of the above-entitled court, located at 1301 Clay
 6 Street, 3rd Floor, Oakland, California, before the Honorable Sandra Brown Armstrong. Stephen
 7 Walters appeared on behalf of Defendant Knickerbocker, and Michael Allen appeared on behalf of
 8 Plaintiffs.

9 **I. BACKGROUND**

10 Plaintiffs' Amended Complaint, filed on October 12, 2007, alleges that 81 apartment
 11 complexes built by defendants A.G. Spanos Construction, Inc., A.G. Spanos Development, Inc.,
 12 A.G. Spanos Land Company, Inc., A.G. Spanos Management, Inc., and The Spanos Corporation
 13 (collectively "A.G. Spanos") and located in various states fail to comply with the Fair Housing Act
 14 (42 U.S.C. § 3601 *et seq.*) ("FHA"). Plaintiffs allege that 34 Spanos-built apartment complexes
 15 located in various states have been tested and fail to meet the accessibility requirements of the
 16 FHA. They also allege that 47 untested Spanos-built apartment complexes located in various
 17 states fail to meet the accessibility requirements of the FHA. Plaintiffs seek to enjoin A.G. Spanos
 18 from, among other things, failing or refusing to retrofit the apartment complexes. Plaintiffs seek
 19 to enjoin Knickerbocker, a current owner of two apartment complexes, from failing or refusing to
 20 permit A.G. Spanos to perform the retrofits.

21 Knickerbocker filed its motion to dismiss Plaintiffs' Amended Complaint on December 12,
 22 2007. Plaintiffs filed their Opposition on February 19, 2008. Knickerbocker filed its Reply on
 23 February 26, 2008.

24 **II. LEGAL STANDARD**

25 The court may dismiss a claim where "there is no cognizable legal theory or an absence of
 26 sufficient facts alleged to support a cognizable legal theory." *Navarro v. Block*, 250 F.3d 729, 732
 27 (9th Cir. 2001). The court is not required to accept as true allegations that are merely conclusory,
 28

1 unwarranted deductions of fact, or unreasonable inferences. *Sprewell v. Golden State Warriors*,
 2 266 F.3d 979, 988 (9th Cir. 2001).

3 A complaint is subject to dismissal under Rule 12(b)(6) of the Federal Rules of Civil
 4 Procedure when an affirmative defense, like the statute of limitations, appears on its face. *ALA*,
 5 *Inc. v. CCAIR, Inc.* (3rd Cir. 1994) 29 F.3d 855, 859. Such a complaint fails to state a claim
 6 because the action is time-barred. *Jablon v. Dean Witter & Co.* (9th Cir. 1980) 614 F.2d 677, 682.

7 **III. ANALYSIS**

8 Plaintiffs' Amended Complaint fails to state a claim for relief against Knickerbocker
 9 because Plaintiffs' claims are barred by the applicable two year statute of limitations (42 U.S.C.
 10 § 3613(a)(1)(A).) Plaintiffs' claims began to run upon the completion of the construction of the
 11 apartment complexes owned by Knickerbocker. *See, e.g., Moseke v. Miller & Smith*, 202
 12 F.Supp.2d 492, 507 (E.D. Va. 2002) (alleged discriminatory act occurred at the design and
 13 construction of building); *United States v. Taigen & Sons*, 303 F.Supp.2d 1129, 1144 (D. Idaho
 14 2003) (alleged violation occurred on date design or construction completed). The Amended
 15 Complaint alleges that completion of construction of the Knickerbocker owned properties was
 16 more than two years ago. The continuing violation doctrine has no application to Knickerbocker,
 17 as Plaintiffs' Amended Complaint does not allege that Knickerbocker has done or performed any
 18 discriminatory act within the two years preceding the filing of Plaintiffs' complaint.

19 Furthermore, Plaintiffs cannot properly seek to enjoin Knickerbocker from refusing to
 20 allow retrofits. Plaintiffs have not shown that they are entitled to injunctive relief against
 21 Knickerbocker because Plaintiffs have not shown that there is any irreparable harm and
 22 inadequacy of legal remedies if Knickerbocker is not enjoined. *See, e.g., City of Los Angeles v.*
 23 *Lyons*, 461 U.S. 95, 111 (1983); *Rondeau v. Mosinee Paper Corp.*, 422 U.S. 49, 57-65 (1975).

24 Finally, Plaintiffs do not allege facts sufficient to establish standing to bring this lawsuit
 25 against Knickerbocker, as Plaintiffs have not alleged that Knickerbocker committed any violation
 26 of the FHA or that Plaintiffs' alleged injury was caused by anything that Knickerbocker did. In
 27 addition, Plaintiffs are not disabled, they do not allege that any testers were disabled, nor do they
 28 sue on behalf of disabled persons.

IV. CONCLUSION

Having read and considered the documents submitted in support of and in opposition to Knickerbocker's motion, and the arguments of counsel, and good cause appearing therefore,

IT IS HEREBY ORDERED that Knickerbocker's motion to dismiss Plaintiffs' First Amended Complaint is GRANTED.

Dated: _____, 2008

Honorable Sandra Brown Armstrong
United States District Judge